

Information Reporting With Respect to Foreign Disregarded Entities

Announcement 2004-4

The Internal Revenue Service (the “Service”) and the Treasury Department (the “Treasury”) announce that they are requesting comments from the public on proposed new Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities*. The form will be required to be filed by U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively (for example, U.S. persons that own a 10 percent or greater interest in an FDE indirectly through a controlled foreign corporation (CFC) or controlled foreign partnership (CFP)). An FDE is an entity that is created or organized in a foreign jurisdiction and that is disregarded as separate from its owner for U.S. income tax purposes under section 301.7701-2 and -3 of the Income Tax Regulations. The reporting of information on Form 8858 will be required under the authority of sections 6011, 6012, 6031 and 6038 of the Internal Revenue Code and the related regulations, for annual accounting periods of tax owners of FDEs beginning on or after January 1, 2004. Attached to this announcement is a copy of the proposed form, with respect to which the Service and the Treasury are requesting comments from the public.

BACKGROUND

Proposed Form 8858 was developed to enable the Service to administer more efficiently the provisions of the tax law with respect to U.S. persons that own FDEs. The promulgation of the elective entity classification regulations in 1997 has facilitated the use of FDEs by U.S. persons with cross-border investments or operations. The Service has had significant difficulties administering the relevant provisions of the tax law because the information reporting requirements still date from a time when the substantive entity classification rules did not contemplate disregarded entities. The current lack of

relevant information reporting with respect to FDEs has hindered the Service’s ability to identify potential compliance issues efficiently and effectively. The Service is committed to reducing the length of the corporate examination process and improving the currency of examinations. The information to be reported on Form 8858 will help the Service identify issues more efficiently, ensuring that the Service can better focus resources and reduce exam cycle time.

PROPOSED FORM 8858

Proposed Form 8858 is three pages long, and consists of one section and five schedules, plus a separate Schedule M. The introductory section of proposed Form 8858 requests identifying information. The schedules to proposed Form 8858 include requests for abbreviated income statement information (Schedule C), abbreviated balance sheet information (Schedule F), and summary information regarding taxable income or earnings and profits (Schedule H). Schedule C-1 requests information relating to the foreign currency rules applicable to foreign disregarded entities, and Schedule G consists of six specific yes/no questions. Schedule M requests information regarding related party transactions between an FDE owned by a CFP or a CFC and a related person other than the CFP or CFC. Information regarding transactions between an FDE and its tax owner or between or among FDEs of the same tax owner is not requested, except where such information is required to administer provisions of the tax law that recognize inter-branch transactions, such as the foreign currency rules.

To ensure that taxpayer burden is minimized, each item of information requested on proposed Form 8858 has been evaluated to make certain that it is necessary to the administration of the tax law and that it is not duplicative of information already required to be reported. Proposed Form 8858 requests only the minimum information needed to identify the tax items that are attributable to an FDE. Almost all of the items of information requested from U.S. persons on proposed Form 8858 with respect to an FDE are currently required to

be reported by such U.S. persons on an aggregate basis on, for example, Form 5471 (in the case of FDEs of CFCs) or Form 8865 (in the case of FDEs of CFPs).

Consistent with the objectives of proposed Form 8858 and consistent with section 6038 of the Code, with a view to minimizing taxpayer burden and aiding Service efforts to reduce exam cycle time, the Service and the Treasury also intend to review Forms 5471 and 8865 to ensure that the information requested on these forms enables the Service to administer effectively the tax law applicable to U.S. owners of CFCs and CFPs, is necessary to the administration of the tax law, and is not duplicative of information required to be reported on proposed Form 8858 or other forms.

GENERAL QUESTIONS ABOUT FORM 8858

Who will be required to file Form 8858?

Form 8858 will be required to be filed by U.S. persons that are tax owners (as defined below) of FDEs, or that own certain interests in foreign tax owners of FDEs.

Specifically, U.S. persons that are tax owners of FDEs would complete the entire Form 8858 except for Schedule M. In the case of U.S. persons that are required to file a Form 5471 with respect to a CFC that is a tax owner of an FDE, such U.S. persons that are Category 4 filers of Form 5471 would complete the entire Form 8858 and separate Schedule M. U.S. persons that are Category 5 filers of Form 5471 (*i.e.*, noncontrolling shareholders) would complete only the identifying information on page 1 of Form 8858, and Schedules G and H. Schedule M would not be required from Category 5 filers of Form 5471.

In the case of U.S. persons that are required to file a Form 8865 with respect to a CFP that is a tax owner of an FDE, such U.S. persons that are Category 1 filers of Form 8865 would complete the entire Form 8858 and separate Schedule M. U.S. persons that are Category 2 filers of Form 8865 (*i.e.*, noncontrolling partners) would complete only the identifying information on page 1 of Form 8858, and Schedules G and H. Schedule M would not be required from Category 2 filers of Form 8865.

Who is the tax owner of an FDE?

For purposes of completing the Form 8858, the tax owner of the FDE is the person that is treated as owning the assets and liabilities of the FDE for purposes of U.S. income tax law.

Who is the direct owner of an FDE?

For purposes of completing the Form 8858, the direct owner of an FDE is the legal owner of the disregarded entity.

For example, assume A, a U.S. individual, is a 60 percent partner of CFP, a controlled foreign partnership. FDE 1 is a foreign disregarded entity owned by CFP, and FDE 2 is a foreign disregarded entity owned by FDE 1. In this example, FDE 1 is the direct owner of FDE 2, and CFP is the direct owner of FDE 1. CFP is the tax owner with respect to both FDE 1 and FDE 2. A would be required to file the Forms 8858 relating to FDE 1 and FDE 2.

When will Form 8858 be required to be filed?

Form 8858 will be due when the filer's U.S. income tax or information return is due, including extensions.

How will Form 8858 be filed?

The filer will be required to file Form 8858 as an attachment to the filer's U.S. income tax or information return. In the case of a filer that is not the tax owner of the FDE, the filer will be required to attach

Form 8858 to any form filed by the filer with respect to the foreign entity that is the tax owner of the FDE.

For example, where a U.S. person indirectly owns an FDE through a CFC, the CFC is the tax owner of the FDE. In this instance, the U.S. person will be required to file a Form 8858 because it indirectly owns the FDE through a CFC. The Form 8858 will be required to be filed as an attachment to the Form 5471 filed with the U.S. person's U.S. income tax return.

A separate Form 8858, including Schedule M if required to be filed, will be required for each FDE.

Will there be any exceptions to filing Form 8858?

Instructions for the Form 8858 will provide filing exceptions similar to those set forth in the instructions for Form 5471 and Form 8865. For example, exceptions from filing for multiple filers of the same information, for members of consolidated groups, and for owners of dormant FDEs will apply for purposes of Form 8858.

What is the effective date for Form 8858?

Form 8858 will be required to be filed for annual accounting periods of tax owners of FDEs beginning on or after January 1, 2004.

Can Form 8858 be filed electronically?

The instructions for filing Form 8858 will include information on electronic filing.

REQUEST FOR COMMENTS ON THE FORM

The Service and the Treasury are requesting comments about proposed Form 8858. The Service and the Treasury are particularly interested in receiving comments on matters that should be addressed in the instructions to Form 8858, such as whether clarification is needed as to specific aspects of the filing requirements or the information requested on the form. The Service and the Treasury also are requesting comments about current Forms 5471 and 8865, in particular whether any modifications are necessary in light of proposed Form 8858 to ensure that the information requested on Forms 5471 and 8865 is necessary to the administration of the tax law and is not duplicative of information required to be reported on proposed Form 8858 or other forms. Written comments should be sent to: Tax Products Coordinating Committee, Internal Revenue Service, SE:W:CAR:MP:T, Room 6406, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Alternatively, comments may be e-mailed to tfpmail@publish.no.irs.gov. Comments must be received by March 1, 2004.

The principal author of this announcement is Alexandra Helou of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury and the IRS participated in its development. For further information regarding this announcement, contact Alexandra Helou at (202) 622-3840 (not a toll-free call).

Form

8858

Information Return of U.S. Persons With Respect To Foreign Disregarded Entities

See separate instructions.

OMB No. 1545-XXXX

(December 2004)

Department of the Treasury Internal Revenue Service

Information furnished for the foreign disregarded entity's annual accounting period (see instructions) beginning , 20 , and ending , 20

Name of person filing this return

Filer's identifying number

Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)

City or town, state, and ZIP code

Filer's tax year beginning , 20 , and ending , 20

Important: Fill in all applicable lines and schedules. All information must be in English. All amounts must be stated in U.S. dollars unless otherwise indicated.

1a Name and address of foreign disregarded entity
b U.S. identifying number, if any
c Country(ies) under whose laws organized and entity type under local tax law
d Date(s) of organization
e Effective date as foreign disregarded entity
f If benefits under a U.S. tax treaty were claimed with respect to income of the foreign disregarded entity, enter the treaty and article number
g Country in which principal business activity is conducted
h Principal business activity
i Functional currency

2 Provide the following information for the foreign disregarded entity's accounting period stated above.

a Name, address, and identifying number of branch office or agent (if any) in the United States
b Name and address (including corporate department, if applicable) of person(s) with custody of the books and records of the foreign disregarded entity, and the location of such books and records, if different

3 For the tax owner of the foreign disregarded entity (if different from the filer) provide the following:

a Name and address
b Tax year
c U.S. identifying number, if any
d Country under whose laws organized
e Functional currency

4 For the direct owner of the foreign disregarded entity (if different from the tax owner) provide the following:

a Name and address
b Country under whose laws organized
c U.S. identifying number, if any
d Functional currency

5 Provide a list or an organizational chart identifying the name, placement, percentage of ownership, and tax classification of all entities in the chain between the tax owner and the foreign disregarded entity, and all entities in which the foreign disregarded entity has a 10% or more direct or indirect interest. See instructions.

Schedule C Income Statement (see page XX of the instructions)

Important: Report all information in functional currency in accordance with U.S. GAAP. Also, report each amount in U.S. dollars translated from functional currency (using GAAP translation rules). However, if the functional currency is the U.S. dollar, complete only the U.S. Dollars column. See instructions for special rules for foreign disregarded entities that use DASTM.

Table with 3 columns: Line number, Functional Currency, U.S. Dollars. Rows 1-8: Gross receipts or sales, Cost of goods sold, Gross profit, Other income, Total income, Total deductions, Other adjustments, Net income (loss) per books.

Schedule C-1 Section 987 Gain or Loss Information

	Amount stated in functional currency of foreign disregarded entity		Amount stated in functional currency of recipient	
	1	2	Yes	No
1 Remittances from the foreign disregarded entity				
2 Section 987 gain (loss) of recipient				
3 Were all remittances from the foreign disregarded entity reflected on the books of the direct owner?				
4 Did the tax owner change its method of accounting for section 987 gain or loss with respect to remittances from the foreign disregarded entity during the tax year?				

Schedule F Balance Sheet

Important: Report all amounts in U.S. dollars computed in functional currency and translated into U.S. dollars in accordance with U.S. GAAP. See page XX of the instructions for an exception for foreign disregarded entities that use DASTM.

	Assets		(a)	(b)
	1	2	Beginning of annual accounting period	End of annual accounting period
1 Cash and other current assets				
2 Other assets				
3 Total assets				
Liabilities and Owner's Equity				
4 Liabilities,				
5 Owner's equity				
6 Total liabilities and owner's equity				

Schedule G Other Information

	Yes	No
1 During the tax year, did the foreign disregarded entity own an interest in any trust?		
2 During the tax year, did the foreign disregarded entity own at least a 10% interest, directly or indirectly, in any foreign partnership?		
3 Were substantially all of the assets of the foreign disregarded entity sold, exchanged, transferred, or otherwise disposed of during the tax year?		
4 Answer the following question only if the foreign disregarded entity made its election to be treated as disregarded from its owner during the tax year: Did the tax owner claim a loss with respect to stock or debt of the foreign disregarded entity as a result of the election?		
5 Answer the following question only if the foreign disregarded entity is owned directly or indirectly by a domestic corporation and the foreign disregarded entity incurred a net operating loss for the tax year: Is the foreign disregarded entity a separate unit as defined in Regulation section §1.1503-2(c)(3) and (4)? (If yes, see the instructions)		
6 Answer the following question only if the tax owner of the foreign disregarded entity is a controlled foreign corporation (CFC): Were there any intracompany transactions between the foreign disregarded entity and the CFC or any other branch of the CFC during the tax year, in which the foreign disregarded entity acted as a manufacturing, selling, or purchasing branch?		

Schedule H Current Earnings and Profits or Taxable Income (see page XX of the instructions)

Important: Enter the amounts on lines 1 through 6 in functional currency.

1 Current year net income or (loss) per foreign books of account	1	
2 Total net additions	2	
3 Total net subtractions	3	
4 Current earnings and profits (or taxable income—see instructions) (line 1 plus line 2 minus line 3)	4	
5 DASTM gain or loss (if applicable)	5	
6 Combine lines 4 and 5	6	
7 Current earnings and profits (or taxable income) in U.S. dollars (line 6 translated at the appropriate exchange rate as defined in section 989(b) and the related regulations (see instructions)).	7	
Enter exchange rate used for line 7 ▶		

**SCHEDULE M
(Form 8858)**

(December 2004)
Department of the Treasury
Internal Revenue Service

**Transactions Between Foreign Disregarded Entity of a
Foreign Tax Owner and the Filer or Other Related Entities**

OMB No. 1545-XXXX

▶ **Attach to Form 8858.** ▶ **See separate instructions.**

Name of person filing Form 8858

Identifying number

Name of foreign disregarded entity

Name of tax owner

Important: Complete a *separate* Schedule M for each foreign disregarded entity for which the tax owner is a controlled foreign corporation or controlled foreign partnership. Enter the totals for each type of transaction that occurred during the annual accounting period between the foreign disregarded entity and the persons listed in the applicable columns (b) through (f). All amounts must be stated in U.S. dollars translated from functional currency at the appropriate exchange rate for the foreign disregarded entity's tax year (see page XX of the instructions).

Enter the relevant functional currency and the exchange rate used throughout this schedule ▶

Check the box that identifies the status of the tax owner and complete lines 1 through 19 with respect to the applicable columns (b) through (f):

<input type="checkbox"/> Controlled Foreign Partnership (a) Transactions of foreign disregarded entity	(b) U.S. person filing this return	(c) Any domestic corporation or partnership controlling or controlled by the filer	(d) Any foreign corporation or partnership controlling or controlled by the filer (other than the tax owner)	(e) Any U.S. person with a 10% or more direct interest in the controlled foreign partnership (other than the filer)	
<input type="checkbox"/> Controlled Foreign Corporation (a) Transactions of foreign disregarded entity	(b) U.S. person filing this return	(c) Any domestic corporation or partnership controlled by the filer	(d) Any foreign corporation or partnership controlled by the filer (other than tax owner)	(e) 10% or more U.S. shareholder of any corporation controlling the tax owner	(f) 10% or more U.S. shareholder, or other owner, of any entity controlling the tax owner
1 Sales of inventory					
2 Sales of property rights					
3 Compensation received for certain services					
4 Commissions received					
5 Rents, royalties, and license fees received					
6 Dividends/Distributions received					
7 Interest received					
8 Other					
9 Add lines 1 through 8					
10 Purchases of inventory					
11 Purchases of tangible property other than inventory					
12 Purchases of property rights					
13 Compensation paid for certain services					
14 Commissions paid					
15 Rents, royalties, and license fees paid					
16 Interest paid					
17 Add lines 10 through 16					
18 Amounts borrowed (see page xx of the instructions)					
19 Amounts loaned (see page xx of the instructions)					